

BOEING AEROSPACE COMPANY

A Division of The Boeing Company
Mail Stop 89-02

P.O. Box 3999
Seattle, Washington 98124-2499

APR 26 1985

INTERNATIONAL
AIRPORT

April 24, 1985
2-4101-RWD-243

King County International Airport
P.O. Box 80245
Seattle, WA 98108

Attention: Mr. Jeff Winter

Gentlemen:

The Boeing Company is aware of new regulations that require permits for stormwater discharges. These rules may affect your jurisdiction as well. Applications for National Pollutant Discharge Elimination System (NPDES) permits for all stormwater discharges are due April 26, 1985, under amendments to 40 CFR, part 122. The Boeing Company is currently making application for these permits so as to comply with this program for our properties.

It is our interpretation that the owner or operator of the portion of a stormwater conveyance system that discharges directly into waters of the United States may file a single application covering commonly shared conveyance systems (See attached copy of Part 122). This application may require information from each of the owners or operators sharing the system. Since the stormwaters from the Boeing facility at 7355 Perimeter Road S., Seattle, WA 98108 drain to your system, we will not be filing for the permit. We are willing to work with you and supply any information necessary for your required application.

Please contact David Smukowski in Seattle on (206) 241-3720 at your convenience for more details on the regulations. He will be able to answer pertinent questions or direct you to the specific Boeing personnel to answer specific questions about our stormwater conveyances.

Sincerely,

M. A. Schultz
M. A. Schultz

cc: W.S. Dept. of Ecology

RWD:rm

Attachment

ROUTE

DS
JE *SR*
JW
KD
.....
.....
.....

BOEING

KCSlip4 59935

SEA426234

NPOES PERMITS

8-71a
131:1007

301(b)(1)(A) and 301(b)(1)(B) of CWA, and for which the State or interstate agency has performed a pollutants load allocation for the pollutant to be discharged, must demonstrate, before the close of the public comment period, that:

(1) There are sufficient remaining pollutant load allocations to allow for the discharge; and

(2) The existing discharges into that segment are subject to compliance schedules designed to bring the segment into compliance with applicable water quality standards.

§ 122.6 Effect of a permit.

(a) *Applicable to State programs. see § 122.25.* Except for any toxic effluent standards and prohibitions imposed under section 307 of the CWA, compliance with a permit during its term constitutes compliance, for purposes of enforcement, with section 301, 302, 303, 307, 312, 402, and 405 of CWA. However, a permit may be modified, revoked and renewed, or terminated during its term for cause as set forth in §§ 122.62 and 122.64.

(b) *Applicable to State programs. See § 122.25.* The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.

(c) The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of State or local law or regulations.

§ 122.6 Continuation of expiring permits.

(a) *EPA permits.* When EPA is the permit-issuing authority, the conditions of an expired permit continue in force under 5 U.S.C. 554(c) until the effective date of a new permit (see § 124.15) if:

(1) The permittee has submitted a timely application under § 122.21 which is a complete (under § 122.21(e)) application for a new permit; and

(2) The Regional Administrator, through no fault of the permittee does not issue a new permit with an effective date under § 124.15 on or before the expiration date of the previous permit (for example, when issuance is impracticable due to time or resource constraints).

(b) *Effect.* Permits continued under this section remain fully effective and enforceable.

(c) *Enforcement.* When the permittee is not in compliance with the conditions of the expiring or expired permit the Regional Administrator may choose to do any or all of the following:

(1) Initiate enforcement action based upon the permit which has been continued;

(2) Issue a notice of intent to deny the new permit under § 124.6. If the permit is denied, the owner or operator would then be required to cease the activities authorized by the continued permit or be subject to enforcement action for operating without a permit;

(3) Issue a new permit under Part 124 with appropriate conditions; or

(4) Take other actions authorized by these regulations.

(d) *State continuation.* (1) An EPA-issued permit does not continue in force beyond its expiration date under Federal law if at that time a State is the permitting authority. States authorized to administer the NPOES program may continue either EPA or State-issued permits until the effective date of the new permits, if State law allows. Otherwise, the facility or activity is operating without a permit from the time of expiration of the old permit to the effective date of the State-issued new permit.

§ 122.7 Confidentiality of information.

(a) In accordance with 40-CFR Part 2, any information submitted to EPA pursuant to these regulations may be claimed as confidential by the submitter. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, EPA may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures in 40 CFR Part 2 (Public Information).

(b) *Applicable to State programs. see § 122.25.* Claims of confidentiality for the following information will be denied:

(1) The name and address of any permit applicant or permittee;

(2) Permit applications, permits, and effluent data.

(c) *Applicable to State programs. see § 122.25.* Information required by NPOES application forms provided by the Director under § 122.21 may not be claimed confidential. This includes information submitted on the forms themselves and any attachments used to supply information required by the forms.

Subpart B—Permit Application and Special NPOES Program Requirements

§ 122.21 Application for a permit (Applicable to State programs, see § 122.25).

(a) *Duty to apply.* Any person who discharges or proposes to discharge pollutants and who does not have an effective permit, except persons covered by general permits under § 122.28, excluded under § 122.1, or a user of a privately owned treatment works unless the Director requires otherwise under § 122.44(a), shall submit a complete application (which shall include a BAP program if necessary under 40 CFR 123.102) to the Director in accordance with this section and Part 124.

(b) *Who applies?* When a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit.

(c)(1) *Time to apply.* Any person proposing a new discharge shall submit an application at least 180 days before the date on which the discharge is to commence, unless permission for a later date has been granted by the Director. Persons proposing a new discharge are encouraged to submit their applications well in advance of the 180 day requirement to avoid delay. See also paragraph (k) of this section.

[122.21(c)(1) designated by 49 FR 38046, September 26, 1984]

(2) Any existing storm water discharger under § 122.28 that does not have an effective permit shall submit an application by March 28, 1985. Any

For Storm water dischargers from jointly owned systems see
122.22(a)(3) (Page 153) and 122.26(a) (Page 154)

discharger designated under § 122.20(c) shall submit an application within 6 months of notification of its designation. [122.21(c)(2) added by 49 FR 38046, September 26, 1984]

(d) *Duty to reapply.* (1) Any POTW with a currently effective permit shall submit a new application at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the Director. (The Director shall not grant permission for applications to be submitted later than the expiration date of the existing permit.)

(2) All other permittees with currently effective permits shall submit a new application 180 days before the existing permit expires, except that:

(i) The Regional Administrator may grant permission to submit an application later than the deadline for submission otherwise applicable, but no later than the permit expiration date; and

(ii) The Regional Administrator may grant permission to submit the information required by paragraphs (g)(7), (9), and (10) of this section after the permit expiration date.

[122.21(d)(2) revised by 49 FR 31842, August 8, 1984]

(3) All applicants for EPA issued permits, other than POTWs and new sources, must complete Forms 1 and either 2b or 2c of the consolidated permit application forms to apply under section 122.21 and paragraphs (f), (g), and (h) of this section.

[122.21(d)(3) added by 49 FR 31842, August 8, 1984]

(e) *Completeness.* The Director shall not issue a permit before receiving a complete application for a permit except for NPDES general permits. An application for a permit is complete when the Director receives an application form and any supplemental information which are completed to his or her satisfaction. The completeness of any application for a permit shall be judged independently of the status of any other permit application or permit for the same facility or activity. For EPA administered NPDES programs, an application which is reviewed under § 124.3 is complete when the Director receives either a complete application or the information listed in a notice of deficiency.

(f) *Information requirements.* All applicants for NPDES permits shall provide the following information to the Director, using the application form provided by the Director (additional information required of applicants is set forth in paragraphs (g)-(k)) of this section.

(1) The activities conducted by the applicant which require it to obtain an NPDES permit.

(2) Name, mailing address, and location of the facility for which the application is submitted.

(3) Up to four SIC codes which best reflect the principal products or services provided by the facility.

(4) The operator's name, address, telephone number, ownership status, and status as Federal, State, private, public, or other entity.

(5) Whether the facility is located on Indian lands.

(6) A listing of all permits or construction approvals received or applied for under any of the following programs:

(i) Hazardous Waste Management program under RCRA.

(ii) DUC program under SDWA.

(iii) NPDES program under CWA.

(iv) Prevention of Significant Deterioration (PSD) program under the Clean Air Act.

(v) Nonattainment program under the Clean Air Act.

(vi) National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction approval under the Clean Air Act.

(vii) Ocean dumping permits under the Marine Protection Research and Sanctuaries Act.

(viii) Dredge or fill permits under section 404 of CWA.

(ix) Other relevant environmental permits, including State permits.

(7) A topographic map (or other map if a topographic map is unavailable) extending one mile beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground; and those wells, springs, other surface water bodies, and drinking water wells listed in public records or

otherwise known to the applicant in the map area. Group II storm water discharges, as defined in § 122.20(b)(3), are exempt from the requirements of paragraph (f)(7) of this section.

[122.21(f)(7) amended by 49 FR 38046, September 26, 1984]

(8) A brief description of the nature of the business.

(9) For Group II storm water discharges (as defined in § 122.20(b)(3)) only, a brief narrative description of:

(i) The drainage area, including an estimate of the size and nature of the area;

(ii) The receiving water; and

(iii) Any treatment applied to the discharge.

[122.21(f)(9) added by 49 FR 38046, September 26, 1984]

(g) *Application requirements for existing manufacturing, commercial, mining, and silvicultural dischargers.* Existing manufacturing, commercial, mining, and silvicultural dischargers applying for NPDES permits shall provide the following information to the Director, using application forms provided by the Director:

(1) *Outfall location.* The latitude and longitude to the nearest 15 seconds and the name of the receiving water.

(2) *Line Drawing.* A line drawing of the water flow through the facility with a water balance, showing operations contributing wastewater to the effluent and treatment units. Similar processes, operations, or production areas may be indicated as a single unit, labeled to correspond to the more detailed identification under paragraph (g)(3) of this section. The water balance must show approximate average flows at intake and discharge points and between units, including treatment units. If a water balance cannot be determined (for example, for certain mining activities), the applicant may provide instead a pictorial description of the nature and amount of any sources of water and any collection and treatment measures.

(3) *Average flows and treatment.* A narrative identification of each type of process, operation, or production area which contributes wastewater to the effluent for each outfall, including process wastewater, cooling water, and stormwater runoff; the average flow which each process contributes; and a

[Sec. 122.21(g)(3)]

description of the treatment the wastewater receives, including the ultimate disposal of any solid or fluid wastes other than by discharge. Processes, operations or production areas may be described in general terms (for example, "dye-making reactor", "distillation tower".) For a privately owned treatment works, this information shall include the identity of each user of the treatment works.

(4) *Intermittent flows.* If any of the discharges described in paragraph (g)(3) of this section are intermittent or seasonal, a description of the frequency, duration and flow rate of each discharge occurrence (except for stormwater runoff, spillage or leaks).

(5) *Maximum production.* If an effluent guideline promulgated under section 304 of CWA applies to the applicant and is expressed in terms of production (or other measure of operation), a reasonable measure of the applicant's actual production reported in the units used in the applicable effluent guideline. The reported measure must reflect the actual production of the facility as required by § 122.45(b)(2).

(6) *Improvements.* If the applicant is subject to any present requirements or compliance schedules for construction, upgrading or operation of waste treatment equipment, an identification of the abatement requirement, a description of the abatement project, and a listing of the required and projected final compliance dates. [122.21(g)(7) introductory text revised by 49 FR 38046, September 26, 1984]

(7) *Effluent characteristics.* Information on the discharge of pollutants specified in this subparagraph. When "quantitative data" for a pollutant are required, the applicant must collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136. When no analytical method is approved the applicant may use any suitable method but must provide a description of the method. When an applicant has two or more outfalls with substantially identical effluents, the Director may allow the applicant to test only one outfall and report that the quantitative data also apply to the substantially identical outfalls. The requirements in

paragraphs (g)(7) (iii) and (iv) of this section that an applicant must provide quantitative data for certain pollutants known or believed to be present do not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant must report such pollutants as present. Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, and fecal coliform. For all other pollutants, 24-hour composite samples must be used. However, a minimum of one grab sample may be taken for effluents from holding ponds or other impoundments with a retention period greater than 24 hours, and a minimum of one to four (4) grab samples may be taken for storm water discharges depending on the duration of the discharge. One grab sample shall be taken in the first hour (or less) of discharge with one additional grab sample taken in each succeeding hour of discharge up to a minimum of four grab samples for discharges lasting four or more hours. In addition, the Director may waive composite sampling for any outfall for which the applicant demonstrates that the use of an automatic sampler is infeasible and that the minimum of four (4) grab samples will be a representative sample of the effluent being discharged. An applicant is expected to "know or have reason to believe" that a pollutant is present in an effluent based on an evaluation of the expected use, production, or storage of the pollutant, or on any previous analyses for the pollutant. (For example, any pesticide manufactured by a facility may be expected to be present in contaminated storm water runoff from the facility.)

(i)(A) Every applicant must report quantitative data for every outfall for the following pollutants:
Biochemical Oxygen Demand (BOD₅)
Chemical Oxygen Demand
Total Organic Carbon
Total Suspended Solids
Ammonia (as N)
Temperature (both winter and summer)
pH

(B) The Director may waive the reporting requirements for individual point sources or for a particular industry category for one or more of the pollutants listed in paragraph (g)(7)(i)(A)

of this section if the applicant has demonstrated that such a waiver is appropriate because information adequate to support issuance of a permit can be obtained with less stringent requirements.

[122.21(g)(7)(i)(B) revised by 49 FR 38046, September 26, 1984]

(ii) Each applicant with processes in one or more primary industry category (see Appendix A to Part 122) contributing to a discharge must report quantitative data for the following pollutants in each outfall containing process wastewater:

(A) The organic toxic pollutants in the fractions designated in Table I of Appendix D of this Part for the applicant's industrial category or categories unless the applicant qualifies as a small business under paragraph (d)(6) of this section. Table II of Appendix D of this Part lists the organic toxic pollutants in each fraction. The fractions result from the sample preparation required by the analytical procedure which uses gas chromatography/mass spectrometry. A determination that an applicant falls within a particular industrial category for the purposes of selecting fractions for testing is not conclusive as to the applicant's inclusion in that category for any other purposes. [See Notes 2, 3, and 4 of this section.]

(B) The pollutants listed in Table III of Appendix D of this Part (the toxic metals, cyanide, and total phenols). [122.21(g)(7)(iii) revised by 49 FR 38046, September 26, 1984]

(iii)(A) Each applicant must indicate whether it knows or has reason to believe that any of the pollutants in Table IV of Appendix D (certain conventional and nonconventional pollutants) is discharged from each outfall. If an applicable effluent limitations guideline either directly limits the pollutant or, by its express terms, indirectly limits the pollutant through limitations on an indicator, the applicant must report quantitative data. For every pollutant discharged which is not so limited in an effluent limitations guideline, the applicant must either report quantitative data or briefly describe the reasons the pollutant is expected to be discharged.

[Sec. 122.21(g)(7)(iv)]

(B) Each applicant must indicate whether it knows or has reason to believe that any of the pollutants listed in Table II or Table III of Appendix D (the toxic pollutants and total phenols) for which quantitative data are not otherwise required under paragraph (g)(7)(ii) of this section, is discharged from each outfall. For every pollutant expected to be discharged in concentrations of 10 ppb or greater the applicant must report quantitative data. For acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4,6 dinitrophenol, where any of these four pollutants are expected to be discharged in concentrations of 100 ppb or greater the applicant must report quantitative data. For every pollutant expected to be discharged in concentrations less than 10 ppb, or in the case of acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4,6 dinitrophenol, in concentrations less than 100 ppb, the applicant must either submit quantitative data or briefly describe the reasons the pollutant is expected to be discharged. An applicant qualifying as a small business under paragraph (g)(8) of this section is not required to analyze for pollutants listed in Table II of Appendix D (the organic toxic pollutants).

(iv) Each applicant must indicate whether it knows or has reason to believe that any of the pollutants in Table V of Appendix D of this Part (certain hazardous substances and asbestos) is discharged from each outfall. For every pollutant expected to be discharged, the applicant must briefly describe the reasons the pollutant is expected to be discharged, and report any quantitative data it has for any pollutant.

(v) Each applicant must report qualitative data, generated using a screening procedure not calibrated with analytical standards, for 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) if it:

(A) Uses or manufactures 2,4,5-trichlorophenoxy acetic acid (2,4,5-T); 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5-TP); 2-(2,4,5-trichlorophenoxy) ethyl, 2,2-dichloropropionate (Erbon); O,O-dimethyl O-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel); 2,4,5-trichlorophenol (TCP); or hexachlorophene (HCP); or

(B) Knows or has reason to believe that TCDD is or may be present in an effluent.

(8) *Small business exemption.* An applicant which qualifies as a small business under one of the following criteria is exempt from the requirements in paragraphs (g)(7)(ii)(A) or (g)(7)(iii)(A) of this section to submit quantitative data for the pollutants listed in Table II of Appendix D of this Part (the organic toxic pollutants):

(i) For coal mines, a probable total annual production of less than 100,000 tons per year.

(ii) For all other applicants, gross total annual sales averaging less than \$100,000 per year (in second quarter 1980 dollars).

(9) *Used or manufactured toxics.* A listing of any toxic pollutant which the applicant currently uses or manufactures as an intermediate or final product or byproduct. The Director may waive or modify this requirement for any applicant if the applicant demonstrates that it would be unduly burdensome to identify each toxic pollutant and the Director has adequate information to issue the permit.

[122.21(g)(9) revised by 49 FR 38046, September 26, 1984]

(10) *Storm water point source exemption.*

(i) An applicant that qualifies as a Group II storm water discharger under § 122.20(b)(3) is exempt from the requirements of paragraphs (f)(7) and (g) of this section, unless the Director requests such information.

(ii) For the purpose of paragraph (g)(3) of this section, storm water point sources may estimate the average flow of their discharge and must indicate the rainfall event and the method of estimation that the estimate is based on.

(iii) The Director may require additional information under paragraph (g)(13) of this section, and may request any Group II storm water dischargers to comply with paragraph (g) of this section.

[122.21(g)(10) revised by 49 FR 38046, September 26, 1984]

(11) *Biological toxicity tests.* An identification of any biological toxicity tests which the applicant knows or has reason to believe have been made within the last 3 years on any of the applicant's discharges or on a receiving water in relation to a discharge.

(12) *Contract analyses.* If a contract laboratory or consulting firm performed any of the analyses required by paragraph (g)(7) of this section, the identity of each laboratory or firm and the analyses performed.

(13) *Additional information.* In addition to the information reported on the application form, applicants shall provide to the Director, at his or her request, such other information as the Director may reasonably require to assess the discharges of the facility and to determine whether to issue an NPDES permit. The additional information may include additional quantitative data and bioassays to assess the relative toxicity of discharges to aquatic life and requirements to determine the cause of the toxicity.

(h) *Application requirements for new and existing concentrated animal feeding operations and aquatic animal production facilities.* New and existing concentrated animal feeding operations (defined in § 122.23) and concentrated aquatic animal production facilities (defined in § 122.24) shall provide the following information to the Director, using the application form provided by the Director:

(1) For concentrated animal feeding operations:

(i) The type and number of animals in open confinement and housed under roof.

(ii) The number of acres used for confinement feeding.

(iii) The design basis for the runoff diversion and control system, if one exists, including the number of acres of contributing drainage, the storage capacity, and the design safety factor.

(2) For concentrated aquatic animal production facilities:

(i) The maximum daily and average monthly flow from each outfall.

(ii) The number of ponds, raceways, and similar structures.

(iii) The name of the receiving water and the source of intake water.

(iv) For each species of aquatic animals, the total yearly and maximum harvestable weight.

(v) The calendar month of maximum feeding and the total mass of food fed during that month.

(i) *Application requirements for new and existing POTWs.* (Reserved.)

(j) *Application requirements for new sources and new dischargers.*

[Reserved.]

(k) *Special provisions for applications from new sources.* (1) The owner or operator of any facility which may be a new source (as defined in § 122.2) and which is located in a State without an approved NPDES program must comply with the provisions of this paragraph.

(2)(i) Before beginning any on-site construction as defined in § 122.29, the owner or operator of any facility which may be a new source must submit information to the Regional Administrator so that he or she can determine if the facility is a new source. The Regional Administrator may request any additional information needed to determine whether the facility is a new source.

(ii) The Regional Administrator shall make an initial determination whether the facility is a new source within 30 days of receiving all necessary information under paragraph (k)(2)(i) of this section.

(3) The Regional Administrator shall issue a public notice in accordance with § 124.10 of the new source determination under paragraph (k)(2) of this section. If the Regional Administrator has determined that the facility is a new source, the notice shall state that the applicant must comply with the environmental review requirements of 40 CFR 6.600 *et seq.*

(4) Any interested person may challenge the Regional Administrator's initial new source determination by requesting an evidentiary hearing under Subpart E of Part 124 within 30 days of issuance of the public notice of the initial determination. If all parties to the evidentiary hearing on the determination agree, the Regional Administrator may defer the hearing until after a final permit decision is made, and consolidate the hearing on the determination with any hearing on the permit.

[122.21(k)(4) amended by 49 FR 38046, September 26, 1984]

(l) *Variance requests by non-POTW's.* A discharger which is not a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under any of the following statutory or regulatory provisions within the times specified in this paragraph:

(1) *Fundamentally different factors.* A request for a variance based on the presence of "fundamentally different factors" from those on which the effluent limitations guideline was based, shall be made by the close of the public comment period under § 124.10. The request shall explain how the requirements of § 124.13 and 40 CFR Part 125, Subpart D have been met.

(2) *Non-conventional pollutants.* A request for a variance from the BAT requirements for CWA section 301(b)(2)(F) pollutants (commonly called "non-conventional" pollutants) pursuant to section 301(c) of CWA because of the economic capability of the owner or operator, or pursuant to section 301(g) of CWA because of certain environmental considerations, when those requirements were based on effluent limitation guidelines, must be made by:

(i) Submitting an initial request to the Regional Administrator, as well as to the State Director if applicable, stating the name of the discharger, the permit number, the outfall number(s), the applicable effluent guideline, and whether the discharger is requesting a section 301(c) or section 301(g) modification or both. This request must have been filed not later than:

(A) September 25, 1978, for a pollutant which is controlled by a BAT effluent limitation guideline promulgated before December 27, 1977; or

(B) 270 days after promulgation of an applicable effluent limitation guideline for guidelines promulgated after December 27, 1977; and

(ii) Submitting a completed request no later than the close of the public comment period under § 124.10 demonstrating that the requirements of § 124.13 and the applicable requirements of Part 125 have been met.

(iii) Requests for variance from effluent limitations not based on effluent limitation guidelines need only comply with paragraph (1)(2)(ii) of this section and need not be preceded by an initial request under paragraph (1)(2)(i) of this section.

(3) *Delay in construction of POTW.* An extension under CWA section 301(i)(2) of the statutory deadlines in sections 301(b)(1)(A) or (b)(1)(C) of CWA based on delay in completion of a POTW into which the source is to discharge must have been requested on or before June 26, 1978, or 180 days

after the relevant POTW requested an extension under paragraph (m)(2) of this section, whichever is later, but in no event may this date have been later than December 25, 1978. The request shall explain how the requirements of 40 CFR Part 125, Subpart J have been met.

(4) *Innovative technology.* An extension under CWA section 301(k) from the statutory deadline of section 301(b)(2)(A) for best available technology based on the use of innovative technology may be requested no later than the close of the public comment period under § 124.10 for the discharger's initial permit requiring compliance with section 301(b)(2)(A). The request shall demonstrate that the requirements of § 124.13 and Part 125, Subpart C have been met.

(5) *Water quality related effluent limitations.* A modification under section 302(b)(2) of requirements under section 302(a) for achieving water quality related effluent limitations may be requested no later than the close of the public comment period under § 124.10 on the permit from which the modification is sought.

(6) *Thermal discharges.* A variance under CWA section 316(a) for the thermal component of any discharge must be filed with a timely application for a permit under this section, except that if thermal effluent limitations are established under CWA Section 402(a)(1) or are based on water quality standards the request for a variance may be filed by the close of the public comment period under § 124.10. A copy of the request as required under 40 CFR Part 125, Subpart H, shall be sent simultaneously to the appropriate State or interstate certifying agency as required under 40 CFR Part 125. (See § 124.65 for special procedures for section 316(a) thermal variances.)

(m) *Variance requests by POTW's.* A discharger which is a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under any of the following statutory provisions as specified in this paragraph:

(1) *Discharges into marine waters.* A request for a modification under CWA section 301(h) of requirements of CWA section 301(b)(1)(B) for discharges into marine waters must be filed in accordance with the requirements of 40 CFR Part 125, Subpart G.

(2) *Delay in construction.* An extension under CWA section 301(i)(1) of

[Sec. 122.21(m)(2)]

the statutory deadlines in CWA section 301(b)(1)(B) or (b)(1)(C) based on delay in the construction of the POTW must have been requested on or before June 30, 1978.

(3) *Water quality based effluent limitation.* A modification under CWA section 302(b)(2) of the requirements under section 302(a) for achieving water quality based effluent limitations shall be requested no later than the close of the public comment period under § 124.10 on the permit from which the modification is sought.

(n) *Expedited variance procedures and time extensions.* (1) Notwithstanding the time requirements in paragraphs (l) and (m) of this section, the Director may notify a permit applicant before a draft permit is issued under § 124.6 that the draft permit will likely contain limitations which are eligible for variances. In the notice the Director may require the applicant as a condition of consideration of any potential variance request to submit a request explaining how the requirements of 40 CFR Part 125 applicable to the variance have been met and may require its submission within a specified reasonable time after receipt of the notice. The notice may be sent before the permit application has been submitted. The draft or final permit may contain the alternative limitations which may become effective upon final grant of the variance.

(2) A discharger who cannot file a complete request required under paragraph (1)(2)(ii) or (1)(2)(iii) of this section may request an extension. The extension may be granted or denied at the discretion of the Director. Extensions shall be no more than 6 months in duration.

(o) *Recordkeeping.* Applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under this section for a period of at least 3 years from the date the application is signed.

NOTE 1: At 46 FR 2046, Jan. 8, 1981, the Environmental Protection Agency suspended until further notice § 122.21(g)(7)(H)(A) and the corresponding portions of Item V-C of the NPDES application Form 2c as they apply to coal mines. This revision continues that suspension.

NOTE 2: At 46 FR 22545, Apr. 20, 1981, the Environmental Protection Agency suspended until further notice § 122.21(g)(7)(H)(A) and the corresponding portions of Item V-C of the NPDES application Form 2c as they apply to:

1. Testing and reporting for all four organic fractions in the Oreign Mills Subcategory of the Textile Mills Industry (Subpart C—Low water use processing of 40 CFR Part 410), and testing and reporting for the pesticide fraction in all other subcategories of this industrial category.

2. Testing and reporting for the volatile, base/neutral and pesticide fractions in the Base and Precious Metals Subcategory of the Ore Mining and Dressing Industry (Subpart B of 40 CFR Part 440), and testing and reporting for all four fractions in all other subcategories of this industrial category.

3. Testing and reporting for all four GC/MS fractions in the Porcelain Enameling industry.

This revision continues that suspension.

NOTE 3: At 46 FR 35090, July 1, 1981, the Environmental Protection Agency suspended until further notice § 122.21(g)(7)(H)(A) and the corresponding portions of Item V-C of the NPDES application Form 2c as they apply to:

1. Testing and reporting for the pesticide fraction in the Tall Oil Rosin Subcategory (Subpart D) and Rosin-Based Derivatives Subcategory (Subpart F) of the Gum and Wood Chemicals Industry (40 CFR Part 484), and testing and reporting for the pesticide and base/neutral fractions in all other subcategories of this industrial category.

2. Testing and reporting for the pesticide fraction in the Leather Tanning and Finishing, Paint and Ink Formulation, and Photographic Supplies industrial categories.

3. Testing and reporting for the acid, base/neutral and pesticide fractions in the Petroleum Refining industrial category.

4. Testing and reporting for the pesticide fraction in the Papergrade Sulfite subcategories (Subparts J and U) of the Pulp and Paper Industry (40 CFR Part 430): testing and reporting for the base/neutral and pesticide fractions in the following subcategories: Deink (Subpart Q), Dissolving Kraft (Subpart P), and Paperboard from Waste Paper (Subpart E); testing and reporting for the volatile, base/neutral and pesticide fractions in the following subcategories: BCT Bleached Kraft (Subpart H), Semi-Chemical (Subparts B and C), and Nonintegrated-Fine Papers (Subpart R); and testing and reporting for the acid, base/neutral, and pesticide fractions in the following subcategories: Fine Bleached Kraft (Subpart I), Dissolving Sulfite Pulp (Subpart K), Groundwood-Fine Papers (Subpart G), Market Bleached Kraft (Subpart G), Tissue from Wastepaper (Subpart T), and Nonintegrated-Tissue Papers (Subpart S).

5. Testing and reporting for the base/neutral fraction in the Once-Through Cooling Water, Fly Ash and Bottom Ash Transport Water process wastestreams of the Steam Electric Power Plant industrial category.

This revision continues that suspension.

NOTE 4: At 46 FR 36703, July 15, 1981, the Environmental Protection Agency suspended

ed until further notice portions of § 122.21(d)(2), as set forth below:

1. Footnote (2) to the table in § 122.21(d)(2).

2. In footnote (3) to the table in 40 CFR § 122.21(d)(2), the portion which restricts the Director's authority to extend the application deadline no later than the permit expiration date as that restriction applies to the submission of data required by § 122.21(d) (7), (8), and (10). Thus, during the suspension, footnote (3) effectively reads as follows:

3. The Director may grant permission to submit an application later than this date but (except for information required by paragraph (d) (7), (8), and (10) of this section) no later than the expiration date of the permit.

This revision continues that suspension.

§ 122.22 Signatories to permit applications and reports (applicable to State programs, see § 122.25).

(a) *Applications.* All permit applications shall be signed as follows:

(1) *For a corporation:* by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

NOTE: EPA does not require specific assignments or delegations of authority to responsible corporate officers identified in § 122.22(a)(1)(i). The Agency will presume that these responsible corporate officers have the requisite authority to sign permit applications unless the corporation has notified the Director to the contrary. Corporate procedures governing authority to sign permit applications may provide for assignment or delegation to applicable corporate positions under § 122.22(a)(1)(ii) rather than to specific individuals.

[122.22(a)(1) revised by 48 FR 39619, September 1, 1983]

(2) *For a partnership or sole proprietorship:* by a general partner or the proprietor, respectively; or

(3) *For a municipality, State, Federal, or other public agency:* by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes: (i) The chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).

[122.22(a)(3) revised by 48 FR 39619, September 1, 1983]

(b) All reports required by permits, other information requested by the Director, and all permit applications submitted for Group II storm water discharges under § 122.28(b)(3) shall be signed by a person described in paragraph (a), or by a duly authorized representative of that person. A person is a duly authorized representative only if:

[122.22(b) introductory text revised by 49 FR 38046, September 26, 1984]

(1) The authorization is made in writing by a person described in paragraph (a) of this section:

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.) [122.22(b)(2) revised by 49 FR 38046, September 26, 1984]

(3) The written authorization is submitted to the Director.

(c) *Changes to authorization.* If an authorization under paragraph (b) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph (b) of this section must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.

(d) *Certification.* Any person signing a document under paragraphs (a) or (b) of

this section shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under the direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

[122.22(d) revised by 48 FR 39619, September 1, 1983]

§ 122.23 Concentrated animal feeding operations (applicable to State NPDES programs, see § 123.25).

(a) *Permit requirement.* Concentrated animal feeding operations are point sources subject to the NPDES permit program.

(b) *Definitions.* (1) "Animal feeding operation" means a lot or facility (other than an aquatic animal production facility) where the following conditions are met:

(i) Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and

(ii) Crops, vegetation forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

(2) Two or more animal feeding operations under common ownership are considered, for the purposes of these regulations, to be a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

(3) "Concentrated animal feeding operation" means an "animal feeding operation" which meets the criteria in Appendix B of this part, or which the Director designates under paragraph (c) of this section.

(c) *Case-by-case designation of concentrated animal feeding operations.*

(1) The Director may designate any animal feeding operation as a concentrated animal feeding operation upon determining that it is a significant contributor of pollution to the waters of the United States. In making this designation the Director shall consider the following factors:

(i) The size of the animal feeding operation and the amount of wastes reaching waters of the United States;

(ii) The location of the animal feeding operation relative to waters of the United States;

(iii) The means of conveyance of animal wastes and process waste waters into waters of the United States;

(iv) The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes and process waste waters into waters of the United States; and

(v) Other relevant factors.

(2) No animal feeding operation with less than the numbers of animals set forth in Appendix B of this part shall be designated as a concentrated animal feeding operation unless:

(i) Pollutants are discharged into waters of the United States through a manmade ditch, flushing system, or other similar manmade device; or

(ii) Pollutants are discharged directly into waters of the United States which originate outside of the facility and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

(3) A permit application shall not be required from a concentrated animal feeding operation designated under this paragraph until the Director has conducted an on-site inspection of the operation and determined that the operation should and could be regulated under the permit program.

§ 122.24 Concentrated aquatic animal production facilities (applicable to State NPDES programs, see § 123.25).

(a) *Permit requirement.* Concentrated aquatic animal production facilities, as defined in this section, are point sources subject to the NPDES permit program.

(b) *Definition.* "Concentrated aquatic animal production facility" means a hatchery, fish farm, or other facility which meets the criteria in Appendix C of this part, or which the Director designates under paragraph (c) of this section.

(c) *Case-by-case designation of concentrated aquatic animal production facilities.* (1) The Director may designate any warm or cold water aquatic animal production facility as a concentrated aquatic animal production facility upon determining that it is a sig-

[Sec. 122.24(c)(1)]

significant contributor of pollution to waters of the United States. In making this designation the Director shall consider the following factors:

- (i) The location and quality of the receiving waters of the United States;
- (ii) The holding, feeding, and production capacities of the facility;
- (iii) The quantity and nature of the pollutants reaching waters of the United States; and
- (iv) Other relevant factors.

(2) A permit application shall not be required from a concentrated aquatic animal production facility designated under this paragraph until the Director has conducted on-site inspection of the facility and has determined that the facility should and could be regulated under the permit program.

§ 122.25 Aquaculture projects (applicable to State NPDES programs, see § 122.25).

(a) **Permit requirement.** Discharges into aquaculture projects, as defined in this section, are subject to the NPDES permit program through section 318 of CWA, and in accordance with 40 CFR Part 125, Subpart B.

(b) **Definitions.** (1) "Aquaculture project" means a defined managed water area which uses discharges of pollutants into that designated area for the maintenance or production of harvestable freshwater, estuarine, or marine plants or animals.

(2) "Designated project area" means the portions of the waters of the United States within which the permittee or permit applicant plans to confine the cultivated species, using a method or plan or operation (including, but not limited to, physical confinement) which, on the basis of reliable scientific evidence, is expected to ensure that specific individual organisms comprising an aquaculture crop will enjoy increased growth attributable to the discharge of pollutants, and be harvested within a defined geographic area.

§ 122.26 Storm water discharges (applicable to State NPDES programs, see § 122.25).

[122.26 revised by 49 FR 38046, September 26, 1984]

(a) **Permit requirement.** Storm water point sources, as defined in this section, are point sources subject to the NPDES permit program. The Director may issue an NPDES permit or permits for discharges into waters of the United

States from a storm water point source covering all conveyances which are a part of that storm water discharge.

Where there is more than one owner or operator of a single system of such conveyances, any or all discharges into the storm water discharge system may be identified in the application submitted by the owner or operator of the portion of the system that discharges directly into waters of the United States. Any such application shall include all information regarding discharges into the system that would be required if the dischargers submitted separate applications. Dischargers so identified shall not require a separate permit unless the Director specifies otherwise. Any permit covering more than one owner or operator shall identify the effluent limitations, if any, which apply to each owner or operator. Where there is more than one owner or operator, no discharge into the storm water discharge may be subject to a permit condition for discharges into the storm water discharge other than its own discharges into that system without its consent. All dischargers into a storm water discharge system must either be covered by an individual permit or a permit issued to the owner or operator of the portion of the system that directly discharges. (See § 122.21(c)(2) for application deadline for existing storm water point sources.)

(b) **Definitions.** (1) "Storm water point source" means a conveyance or system of conveyances (including pipes, conduits, ditches, and channels) primarily used for collecting and conveying storm water runoff and which:

(i) Is located at an urbanized area as designated by the Bureau of the Census according to the criteria in 39 FR 15202 (May 1, 1974);

(ii) Discharges from lands or facilities used for industrial or commercial activities; or

(iii) Is designated under paragraph (c) of this section. Conveyances that discharge storm water runoff combined with municipal sewage are point sources that must obtain NPDES permits, but are not "storm water point sources".

(2) "Group I storm water discharge" means any "storm water point source" which is:

(i) Subject to effluent limitations

guidelines, new source performance standards, or toxic pollutant effluent standards:

(ii) Designated under paragraph (c) of this section; or

(iii) Located at an industrial plant or in plant associated areas. "Plant associated areas" means industrial plant yards, immediate access roads, drainage ponds, refuse piles, storage piles or areas and material or products loading and unloading areas. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots.

(3) "Group II storm water discharge" means any "storm water point source" not included in paragraph (b)(2) of this section. (See § 122.21(g)(10) for exemption from certain application requirements.)

(4) A conveyance or system of conveyances operated primarily for the purpose of collecting and conveying storm water runoff which does not constitute a "storm water point source" under paragraph (b)(1) of this section is not considered a point source subject to the requirements of CWA.

(5) Whether a system of conveyances is or is not a storm water point source for purposes of this section shall have no bearing on whether the system is eligible for funding under Title II of CWA. See 40 CFR 38.925-21.

(c) **Case-by-case designation of storm water discharges.** The Director may designate a conveyance or system of conveyances primarily used for collecting and conveying storm water runoff as a storm water point source. This designation may be made to the extent allowed or required by EPA promulgated effluent limitations guidelines for point sources in the storm water discharge category or when:

(1) A Water Quality Management plan under section 208 of CWA which contains requirements applicable to such point sources is approved; or

(2) The Director determines that a storm water discharge is a significant contributor of pollution to the waters of the United States. In making this determination the Director shall consider the following factors:

(i) The location of the discharge with respect to waters of the United States;

- (ii) The size of the discharge;
- (iii) The quantity and nature of the pollutants reaching waters of the United States; and
- (iv) Other relevant factors.

§ 122.27 Silvicultural activities (applicable to State NPDES programs. see § 122.25).

(a) **Permit requirement.** Silvicultural point sources, as defined in this section, as point sources subject to the NPDES permit program.

(b) **Definitions.** (1) "Silvicultural point source" means any discernible, confined and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities which are operated in connection with silvicultural activities and from which pollutants are discharged into waters of the United States. The term does not include non-point source silvicultural activities such as nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance from which there is natural runoff. However, some of these activities (such as stream crossing for roads) may involve point source discharges of dredged or fill material which may require a CWA section 404 permit (See 33 CFR 209.120 and Part 233).

(2) "Rock crushing and gravel washing facilities" means facilities which process crushed and broken stone, gravel, and riprap (See 40 CFR Part 436, Subpart B, including the effluent limitations guidelines).

(3) "Log sorting and log storage facilities" means facilities whose discharges result from the holding of unprocessed wood, for example, logs or roundwood with bark or after removal of bark held in self-contained bodies of water (mill ponds or log ponds) or stored on land where water is applied intentionally on the logs (wet decking). (See 40 CFR Part 429, Subpart I, including the effluent limitations guidelines).

§ 122.28 General permits (applicable to State NPDES programs. see § 122.25).

(a) **Coverage.** The Director may issue a general permit in accordance with the following:

(1) **Area.** The general permit shall be written to cover a category of discharges described in the permit under paragraph (a)(2) of this section,

except those covered by individual permits, within a geographic area. The area shall correspond to existing geographic or political boundaries, such as:

(i) Designated planning areas under sections 208 and 303 of CWA;

(ii) Sewer districts or sewer authorities;

(iii) City, county, or State political boundaries;

(iv) State highway systems;

(v) Standard metropolitan statistical areas as defined by the Office of Management and Budget;

(vi) Urbanized areas as designated by the Bureau of the Census according to criteria in 30 FR 15202 (May 1, 1974); or

(vii) Any other appropriate division or combination of boundaries.

[122.28(a)(2) amended by 49 FR 38046, September 26, 1984]

(2) **Sources.** The general permit may be written to regulate, within the area described in paragraph (a)(1) of this section, either:

(i) Storm water point sources; or

(ii) A category of point sources other than storm water point sources if the sources all:

(A) Involve the same or substantially similar types of operations;

(B) Discharge the same types of wastes;

(C) Require the same effluent limitation or operating conditions;

(D) Require the same or similar monitoring; and

(E) In the opinion of the Director, are more appropriately controlled under a general permit than under individual permits.

(b) **Administration.** (1) *In general.* General permits may be issued, modified, revoked and reissued, or terminated in accordance with applicable requirements of Part 124 or corresponding State regulations. Special procedures for issuance are found at § 123.44 for States and § 124.58 for EPA.

(2) **Requiring an individual permit.**

(i) The Director may require any person authorized by a general permit to apply for and obtain an individual NPDES permit. Any interested person may petition the Director to take action under this paragraph. Cases where an individual NPDES permit may be required include the following:

(A) The discharge(s) is a significant contributor of pollution as determined

by the factors set forth at § 122.26(c)(2);

(B) The discharger is not in compliance with the conditions of the general NPDES permit;

(C) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;

(D) Effluent limitation guidelines are promulgated for point sources covered by the general NPDES permit;

(E) A Water Quality Management plan containing requirements applicable to such point sources is approved; or

(F) The requirements of paragraph (a) of this section are not met.

(ii) *For EPA issued general permits only,* the Regional Administrator may require any owner or operator authorized by a general permit to apply for an individual NPDES permit as provided in paragraph (b)(2)(i) of this section, only if the owner or operator has been notified in writing that a permit application is required. This notice shall include a brief statement of the reasons for this decision, an application form, a statement setting a time for the owner or operator to file the application, and a statement that on the effective date of the individual NPDES permit the general permit as it applies to the individual permittee shall automatically terminate. The Director may grant additional time upon request of the applicant.

(iii) Any owner or operator authorized by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. The owner or operator shall submit an application under § 122.21, with reasons supporting the request, to the Director no later than 90 days after the publication by EPA of the general permit in the *FEDERAL REGISTER* or the publication by a State in accordance with applicable State law. The request shall be processed under Part 124 or applicable State procedures. The request shall be granted by issuing of any individual permit if the reasons cited by the owner or operator are adequate to support the request.

(iv) When an individual NPDES permit is issued to an owner or operator otherwise subject to a general NPDES permit, the applicability of the general permit to the individual NPDES permittee is automatically terminated on the effective date of the individual permit.

[Sec. 122.28(b)(2)(iv)]

(v) A source excluded from a general permit solely because it already has an individual permit may request that the individual permit be revoked, and that it be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source.

[122.28(c) added by 48 FR 39619, September 1, 1983]

(c) Offshore Oil and Gas Facilities

(Not applicable to State programs.) (1)

The Regional Administrator shall, except as provided below, issue general permits covering discharges from offshore oil and gas exploration and production facilities within the Region's jurisdiction. Where the offshore area includes areas, such as areas of biological concern, for which separate permit conditions are required, the Regional Administrator may issue separate general permits, individual permits, or both. The reason for separate general permits or individual permits shall be set forth in the appropriate fact sheets or statements of basis. Any statement of basis or fact sheet for a draft permit shall include the Regional Administrator's tentative determination as to whether the permit applies to "new sources," "new dischargers," or existing sources and the reasons for this determination, and the Regional Administrator's proposals as to areas of biological concern subject either to separate individual or general permits. For Federally leased lands, the general permit area should generally be no less extensive than the lease sale area defined by the Department of the Interior.

(2) Any interested person, including any prospective permittee, may petition the Regional Administrator to issue a general permit. Unless the Regional Administrator determines under paragraph (c)(1) that no general permit is appropriate, he shall promptly provide a project decision schedule covering the issuance of the general permit or permits for any lease sale area for which the Department of the Interior has published a draft environmental impact statement. The project decision schedule shall meet the requirements of § 124.3(g), and shall include a schedule providing for the issuance of the final general permit or permits not later than the date of the final notice of sale projected by the

Department of the Interior or six months after the date of the request, whichever is later. The Regional Administrator may, at his discretion, issue a project decision schedule for offshore oil and gas facilities in the territorial seas.

(3) Nothing in this paragraph (c) shall affect the authority of the Regional Administrator to require an individual permit under § 122.28(b)(2)(i)(A) through (F).

§ 122.29 New sources and new dischargers.

(a) **Definitions.** (1) "New source" and "new discharger" are defined in § 122.2. [See Note 2.]

(2) "Source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants.

(3) "Existing source" means any source which is not a new source or a new discharger.

(4) "Site" is defined in § 122.2.

(5) "Facilities or equipment" means buildings, structures, process or production equipment or machinery which form a permanent part of the new source and which will be used in its operation. If these facilities or equipment are of such value as to represent a substantial commitment to construct. It excludes facilities or equipment used in connection with feasibility, engineering, and design studies regarding the source or water pollution treatment for the source.

[122.29(b) revised by 49 FR 38046, September 26, 1984]

(b) **Criteria for new source determination.**

(1) Except as otherwise provided in an applicable new source performance standard, a source is a "new source" if it meets the definition of "new source" in § 122.2, and

(i) It is constructed at a site at which no other source is located; or

(ii) It totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

(iii) Its processes are substantially independent of an existing source at the same site. In determining whether these processes are substantially independent, the Director shall consider such factors as the extent to which the new facility is integrated with the existing plant; and the extent to which the new facility is engaged in the same general type of activity as the existing source.

(2) A source meeting the requirements of paragraphs (b)(1) (i), (ii), or (iii) of this section is a new source only if a new source performance standard is independently applicable to it. If there is no such independently applicable standard, the source is a new discharger. See § 122.2.

(3) Construction on a site at which an existing source is located results in a modification subject to § 122.82 rather than a new source (or a new discharger) if the construction does not create a new building, structure, facility, or installation meeting the criteria of paragraphs (b)(1) (i) or (iii) of this section but otherwise alters, replaces, or adds to existing process or production equipment.

(4) Construction of a new source as defined under § 122.2 has commenced if the owner or operator has:

(i) Begun, or caused to begin as part of a continuous on-site construction program:

(A) Any placement, assembly, or installation of facilities or equipment; or

(B) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

(ii) Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under the paragraph.

(c) **Requirement for an Environmental Impact Statement.** (1) The issuance of an NPDES permit to new source:

(i) By EPA may be a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (NEPA), 33 U.S.C. 4321 et seq. and is subject to the environmental review provisions of NEPA as set out in 40 CFR Part 6, Subpart F. EPA will determine whether an Environmental Impact Statement (EIS) is required under § 122.21(k) (special provisions for applications from new sources) and 40 CFR Part 6, Subpart F.

(ii) By an NPDES approved State is

not a Federal action and therefore does not require EPA to conduct an environmental review.

(2) An EIS prepared under this paragraph shall include a recommendation either to issue or deny the permit.

(i) If the recommendation is to deny the permit, the final EIS shall contain the reasons for the recommendation and list those measures, if any, which the applicant should take to cause the recommendation to be changed;

(ii) If the recommendation is to issue the permit, the final EIS shall recommend the actions, if any, which the permittee should take to prevent or minimize any adverse environmental impacts;

(3) The Regional Administrator, to the extent allowed by law, shall issue, condition (other than imposing effluent limitations), or deny the new source NPDES permit following a complete evaluation of any significant beneficial and adverse impacts of the proposed action and a review of the recommendations contained in the EIS or finding of no significant impact. [122.29(c)(3) amended by 49 FR 38046, September 26, 1984]

(4)(i) No on-site construction of a new source for which an EIS is required shall commence before final Agency action in issuing a final permit incorporating appropriate EIS-related requirements, or before execution by the applicant of a legally binding written agreement which requires compliance with all such requirements, unless such construction is determined by the Regional Administrator not to cause significant or irreversible adverse environmental impact. The provisions of any agreement entered into under this paragraph shall be incorporated as conditions of the NPDES permit when it is issued.

(ii) No on-site construction of a new source for which an EIS is not required shall commence until 30 days after issuance of a finding of no significant impact, unless the construction is determined by the Regional Administrator not to cause significant or irreversible adverse environmental impacts.

(3)(i) The commencement of on-site construction in violation of paragraph (c) of this section shall constitute grounds for denial of a permit.

[122.29(c)(3)(i) added by 49 FR 38046, September 26, 1984]

(5)(ii) The permit applicant must notify the Regional Administrator of any on-site construction which begins before the times specified in paragraph (c)(4) of this section. If on-site construction begins in violation of this paragraph, the Regional Administrator shall advise the owner or operator that it is proceeding with construction at its own risk, and that such construction activities constitute grounds for denial of a permit. The Regional Administrator may seek a court order to enjoin construction in violation of this paragraph.

[Former 122.29(c)(5) redesignated as (c)(5)(ii) by 49 FR 38046, September 26, 1984]

(d) *Effect of compliance with new source performance standards.* (The provisions of this paragraph do not apply to existing sources which modify their pollution control facilities or construct new pollution control facilities and achieve performance standards, but which are neither new sources or new dischargers or otherwise do not meet the requirements of this paragraph.)

(1) Except as provided in paragraph (d)(2) of this section, any new discharger, the construction of which commenced after October 18, 1972, or new source which meets the applicable promulgated new source performance standards before the commencement of discharge, may not be subject to any more stringent new source performance standards or to any more stringent technology-based standards under section 301(b)(2) of CWA for the soonest ending of the following periods:

(i) Ten years from the date that construction is completed;

(ii) Ten years from the date the source begins to discharge process or other nonconstruction related wastewater; or

(iii) The period of depreciation or amortization of the facility for the purposes of section 167 or 169 (or both) of the Internal Revenue Code of 1954.

(2) The protection from more stringent standards of performance afforded by paragraph (d)(1) of this section does not apply to:

(i) Additional or more stringent permit conditions which are not technology based; for example, conditions based on water quality standards, or toxic effluent standards or prohibitions under section 307(a) of CWA; or

(ii) Additional permit conditions in accordance with § 125.3 controlling toxic pollutants or hazardous substances which are not controlled by new source performance standards. This includes permit conditions controlling pollutants other than those identified as toxic pollutants or hazardous substances when control of these pollutants has been specifically identified as the method to control the toxic pollutants or hazardous substances.

(3) When an NPDES permit issued to a source with a "protection period" under paragraph (d)(1) of this section will expire on or after the expiration of the protection period, that permit shall require the owner or operator of the source to comply with the requirements of section 301 and any other then applicable requirements of CWA immediately upon the expiration of the protection period. No additional period for achieving compliance with these requirements may be allowed except when necessary to achieve compliance with requirements promulgated less than 3 years before the expiration of the protection period.

(4) The owner or operator of a new source, a new discharger which commenced discharge after August 13, 1979, or a recommencing discharger shall install and have in operating condition, and shall "start-up" all pollution control equipment required to meet the conditions of its permits before beginning to discharge. Within the shortest feasible time (not to exceed 90 days), the owner or operator must meet all permit conditions. The requirements of this paragraph do not apply if the owner or operator is issued a permit containing a compliance schedule under § 122.47(a)(2).

[122.29(d)(4) amended by 49 FR 38046, September 26, 1984]

(5) After the effective date of new source performance standards, it shall be unlawful for any owner or operator of any new source to operate the source in violation of those standards applicable to the source.

NOTE 1: Section 122.29, paragraphs (b)(1) and (2) were suspended until further notice at 45 FR 59318, Sept. 8, 1980.

NOTE 2: At 45 FR 68391, Oct. 15, 1980, effective Oct. 15, 1980, the Environmental Protection Agency suspended until further notice the NPDES "new discharger" definition as it applies to offshore mobile drilling rigs operating in offshore areas adjacent to the Gulf Coast, Atlantic Coast, California

[Sec. 122.29(d)(5)]

and Alaska, except for the Flower Garden area in the Gulf of Mexico and other areas identified as environmentally sensitive by the Bureau of Land Management.

Subpart C—Permit Conditions

§ 122.41 Conditions applicable to all permits (applicable to State programs, see § 122.39).

The following conditions apply to all NPDES permits. Additional conditions applicable to NPDES permits are in § 122.42. All conditions applicable to NPDES permits shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations (or the corresponding approved State regulations) must be given in the permit.

(a) *Duty to comply.* The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

(1) The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the Clean Water Act for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

(2) The Clean Water Act provides that any person who violates a permit condition implementing sections 301, 302, 303, 307, 308, 318 or 405 of the Clean Water Act is subject to a civil penalty not to exceed \$100,000 per day of such violation. Any person who willfully or negligently violates permit conditions implementing sections 301, 302, 303, 307 or 308 of the Act is subject to a fine of not less than \$2,500 nor more than \$25,000 per day of violation, or by imprisonment for not more than 1 year, or both.

(b) *Duty to reapply.* If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit.

(c) *Need to Halt or Reduce not a Defense.* It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to

maintain compliance with the conditions of this permit.

[122.41(c) and (d) revised by 48 FR 39619, September 1, 1983]

(d) *Duty to Mitigate.* The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

(3)(e) *Proper operation and maintenance.* The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

[122.41(e) revised by 49 FR 38046, September 26, 1984]

(f) *Permit actions.* This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

(g) *Property rights.* This permit does not convey any property rights of any sort, or any exclusive privilege.

(h) *Duty to provide information.* The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The permittee shall also furnish to the Director upon request, copies of records required to be kept by this permit.

(i) *Inspection and entry.* The permittee shall allow the Director, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

(1) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

(2) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

(3) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

(4) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

(j) *Monitoring and records.* (1) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

(2) The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application. This period may be extended by request of the Director at any time.

(3) Records of monitoring information shall include:

(i) The date, exact place, and time of sampling or measurements;

(ii) The individual(s) who performed the sampling or measurements;

(iii) The date(s) analyses were performed;

(iv) The individual(s) who performed the analyses;

(v) The analytical techniques or methods used; and

(vi) The results of such analyses.

(4) Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this permit.

(5) The Clean Water Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall